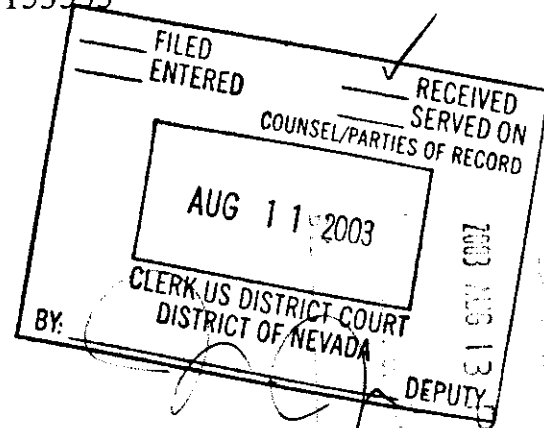


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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION



**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

HOME DEPOT U.S.A. INCORPORATED,
Defendant.

Case No. CV-S-02-1268-KJD-LRL

STIPULATED SETTLEMENT
AGREEMENT AND
[PROPOSED] ORDER THEREON

I. INTRODUCTION

1. On September 30, 2002, Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or "Commission") brought this action against Defendant Home Depot U.S.A. Incorporated, ("Home Depot") alleging that Home Depot discriminated against Mr. Roderick Birdis by failing to promote him due to his race (African American) compared to Caucasian employees, in violation of Title VII, 42 U.S.C. §2000e et seq.

2. The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

3. As a result of having engaged in mediation, the Commission and Home Depot have resolved their differences and have agreed that this action should be

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10

1 resolved by entry of this Settlement Agreement.

2 **II FINDINGS**

3 4. Having examined the terms and provisions of this Agreement and based on
4 the pleadings, record and stipulation of the parties, the Court finds the following:

5 A. The Court has jurisdiction over the parties and the subject matter of
6 this action;

7 B. The terms and provisions of this Settlement Agreement are adequate,
8 fair, reasonable, equitable and just. The rights of Home Depot, the
9 Commission and those for whom the Commission seeks relief are
10 protected adequately by this Settlement Agreement;

11 C. This Agreement conforms with the Federal Rules of Civil Procedure,
12 and Title VII and is not in derogation of the rights and privileges of
13 any person. The entry of this Agreement will further the objectives of
14 Title VII and will be in the best interests of any person. The entry of
15 this Settlement Agreement will further the objectives of Title VII and
16 will be in the best interest of Home Depot, the Commission and those
17 for whom the Commission seeks relief.

18 **III. EFFECT OF AGREEMENT**

19 5. This Agreement resolves all issues and claims arising out of the Complaint
20 filed by the EEOC herein alleging unlawful employment practices by Home Depot
21 at its Store No. 3303 and this Agreement shall be binding and final as to all such
22 issues and claims in this action.

23 6. This Settlement Agreement does not constitute an adjudication by this Court
24 on the merits of the allegations of the EEOC's Complaint. Neither the agreement
25 to enter into this Settlement Agreement nor any provisions hereof constitute an
26 admission by Home Depot of any violation of Title VII. Home Depot specifically
27 disclaims any liability to or wrongful acts against Mr. Birdis or any other person,
28 on the part of itself, its agents or employees, past or present.

1 7. This Settlement Agreement in no way affects the EEOC's rights to process
2 charges against Home Depot not otherwise covered by this Settlement Agreement
3 in accordance with standard EEOC procedures and to commence civil actions on
4 any such charge.

5 **IV. DURATION OF AGREEMENT AND RETENTION OF**
6 **JURISDICTION**

7 8. The provisions and agreements contained herein are effective immediately
8 upon the date which the Agreement is entered by the Court ("the Effective Date").

9 9. The duration of the Settlement Agreement shall be (2) years from the date
10 that the parties sign this Agreement.

11 10. For the duration of the Settlement Agreement, this Court shall retain
12 jurisdiction over this action for the purpose of enforcing the provisions of this
13 Settlement Agreement. Should the Court determine that Home Depot has not
14 complied with this Agreement, in whole or in part, it may impose appropriate
15 relief, including but not limited to the imposition of costs, attorney fees, or other
16 relief that the Court deems appropriate on Home Depot including an extension of
17 the duration of this Agreement for such a period as may be necessary to remedy
18 Home Depot's non-compliance.

19 **V. REMEDIAL RELIEF**

20 **A. Non-Discrimination**

21 11. The Home Depot store located at 1401 S. Lamb Boulevard, Las Vegas,
22 Nevada (Store 3303) its agents and employees shall not discriminate and shall be
23 enjoined for the duration of this Agreement from discriminating against any
24 individual because of his or her race in promotion opportunities.

25 12. Home Depot agrees that it will not engage in retaliation against Mr. Birdis or
26 any employees at Store 3303 for complaining about the inequity of promotion or
27 for his participation in this EEOC charge or this action. Home Depot agrees not to
28 retaliate against Mr. Birdis.

B. Promotion of Charging Party

13. Within fourteen (14) days of the Effective Date (defined in paragraph 8 of the Settlement Agreement), Home Depot agrees to promote Mr. Roderick Birdis to the position of Assistant Store Manager and to assign him to one of its stores within the Jacksonville, Florida area. The promotion will be retroactive to April 1, 2001.

VI. INJUNCTIVE RELIEF

14. Home Depot shall designate Reg Garrett, Vice President of Human Resources to oversee the implementation of the provisions of this Agreement. Should Home Depot retain an outside Equal Employment Opportunity Consultant, Home Depot shall submit the name and credentials of the proposed EEO Consultant to the EEOC's Los Angeles District Office Regional Attorney for approval. If the Regional Attorney does not approve the person proposed, Home Depot will provide her with a list of three additional name(s) and credential(s) of possible EEO Consultants from which the EEOC can select the consultant. If the parties still cannot agree on the selection of the EEO Consultant, then the parties shall submit all six names to the Court and the Court shall select the EEO Consultant.

A. Training

15. Home Depot will provide training to all of its managerial employees within Store Number 3303 concerning discrimination in employment and prevention thereof within a period of 60 days from the Effective Date of this Agreement, and shall conduct at least one four hour training session annually thereafter for the duration of this Settlement Agreement .

16. Home Depot Store #3303 shall also for the duration of this Settlement Agreement;

A. Review and develop as necessary current promotional practices to ensure accountability of managerial decision-making;

1 B. Ensure that its promotion practices and policies prevent discrimination
2 based upon race and comport to Title VII; and

3 17. For the duration of the Agreement, Home Depot Store 3303 agrees to
4 maintain a list of persons promoted to the position of Assistant Manager
5 ("Promotions List"). The Promotions List shall include:

6 A. Race of the Associate;

7 B. Years of experience, to include sales associate and departmental
8 supervisory experience;

9 C. Two most recent evaluation scores for each the Associate;

10 D. For those African American Associates interviewed and not selected
11 for promotion, Home Depot will maintain a statement regarding the
12 reason(s) for non-selection.

13 **VII. MONETARY RELIEF**

14 18. Home Depot agrees to pay a Roderick Birdis a settlement sum in the gross
15 amount of Seventy Thousand Dollars (\$70,000.00), (the "Settlement Sum"). The
16 Settlement Sum shall be paid in two separate checks: (1) a check for backpay
17 made payable to Roderick Birdis in the amount of Ten Thousand Dollars
18 (\$10,000.00), less the employee's share of withholdings and deductions required
19 by law; and (2) a second check for non wage damages made payable to Roderick
20 Birdis in the amount of Sixty Thousand Dollars (\$60,000.00). With respect to the
21 second check, Home Depot will issue an appropriate Internal Revenue Service
22 Form(s) "1099". This amount reflects the full consideration due Mr. Birdis.
23 Home Depot shall pay the employers share of FUTA and FICA on the back pay
24 amount and shall not deduct it from the Settlement Sum.

25 19. Within ten (10) days of the Effective Date of this Agreement, Home Depot
26 shall mail, via certified mail, the checks made payable to Mr. Roderick Birdis in
27 the above amounts to the address provided by the Commission.

28 20. Within ten (10) days of the Effective Date of this Agreement, a copy of the

1 check sent above shall be submitted to the Regional Attorney Anna Y. Park, Equal
 2 Employment Opportunity Commission, Los Angeles District Office, 255 East
 3 Temple Street, 4th Floor, Los Angeles, California 90012.

4 21. Mr. Birdis understands and agrees that he is not entitled to any bonus, stock
 5 options or other employee benefits during the period of time between April 1,
 6 2001 and his promotion to Assistant Manager as set forth herein and that the full
 7 scope of any additional consideration provided to him by Home Depot is set forth
 8 in paragraph 18, above.

9 22. Home Depot will reimburse Mr. Birdis up to \$400.00 for legal fees actually
 10 incurred by him for review of and advice concerning such general releases. The
 11 general releases have been negotiated entirely between Mr. Birdis and his
 12 respective attorney(s). The EEOC does not endorse the general releases and has
 13 had no role in negotiating the terms thereof to the extent such releases include
 14 waivers, release of claims, rights, or other agreements beyond the release of claims
 15 alleged in this action.

16 **VIII. RECORD KEEPING AND REPORTING**

17 23. For the duration of the Agreement, Home Depot agrees to maintain such
 18 records as are necessary to demonstrate its compliance with this Agreement and to
 19 verify that the reports submitted are accurate including without limitation:

- 20 A. Promotions list:
- 21 B. A written description of Home Depots' internal prospective managerial
- 22 employee selection criteria and procedure.
- 23 C. Proof of EEO training to its managerial associates within 30 days of
- 24 completion of training; and
- 25 D. A log of all managerial associates in attendance of EEO
- 26 training.

27 24. Home Depot agrees that upon fifteen (15) work days written notice from the
 28 Commission, Defendants shall make such records described in paragraph 23 A-D

1 available to the Commission for inspection and copying.

2 **IX. COMPLIANCE AND DISPUTE RESOLUTION**

3 25. In the event that the Commission believes that Home Depot has failed to
4 comply with any provision of this Agreement, the Commission shall notify Home
5 Depot in writing of such belief and the facts thereof and afford Home Depot a
6 reasonable period of not less than ten (10) business days to remedy the alleged
7 non-compliance. If Home Depot believes that it has in fact complied with such
8 identified provision of this Agreement, it shall notify the Commission in writing
9 within ten (10) business days after receipt of the Commission's notice of non-
10 compliance, and the Commission or Home Depot may then apply to this Court by
11 motion for appropriate relief, including but not limited to a resolution of the
12 dispute, a determination of whether Home Depot is in compliance and, if not, an
13 appropriate order to enforce the provisions of this Agreement. The parties agree
14 that the remedies available and procedures used for any breach of this Agreement
15 shall be those available and used for breach of a consent decree, except that
16 criminal contempt may not be sought under any circumstances. The parties further
17 agree that only the EEOC or Home Depot may apply to the Court for enforcement
18 of this Agreement, except that Mr. Birdis may seek enforcement of Home Depot's
19 agreement to make payments to him or on his behalf should Home Depot violate
20 such Agreement.

21 **X. MODIFICATION AND SEVERABILITY**

22 26. This Agreement constitutes the complete understanding of the parties with
23 respect to the matters contained herein. No waiver, modification or amendment of
24 any provision of this Agreement will be effective unless made in writing and
25 signed by an authorized representative of each of the parties.

26 27. If one or more provisions of the Agreement are rendered unlawful or
27 unenforceable, the parties shall make good faith efforts to agree upon appropriate
28 amendments to this Agreement in order to effectuate the purposes of the

1 Agreement. In any event, the remaining provisions will remain in full force and
2 effect unless the purposes of the Agreement cannot be achieved.

3 28. By mutual agreement of the parties, this Agreement may be amended or
4 modified in the interests of justice and fairness in order to effectuate the
5 provisions of this Agreement.

6 **XI. COURT COSTS AND ATTORNEYS' FEES**

7 29. Each party shall bear its own court costs and attorneys' fees.

8
9 **XII. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF**
10 **AGREEMENT**

11 30. Home Depot shall bear all costs associated with its administration and
12 implementation of this Agreement.

13 **XIII. MISCELLANEOUS PROVISIONS**

14 31. Home Depot shall assure that, during the term of this Agreement, all of its
15 managers at Store Number 3303 are aware of all of the terms of this Agreement
16 which relate to their job duties.

17 32. This Agreement shall be binding upon and enforceable against Home Depot
18 and its successors and assigns.

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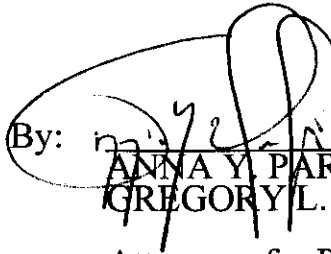
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33. The EEOC shall mail, via certified mail to Home Depot a conformed copy of the dismissal of this action within (10) days after the expiration of the Settlement Agreement.

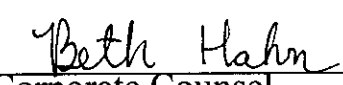
Dated: 7/21/03

By: 
ANNA Y. PARK
GREGORY L. McCLINTON
Attorneys for Plaintiff,
U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Dated: 7.23.03

By: 
MICHAEL SEXTON
PAYNE & FEARS, LLP
Attorneys for Defendant,
Home Depot, U.S.A. Incorporated

Dated: July 24, 2003

By: 
Beth Hahn
Corporate Counsel
Home Depot, U.S.A. Incorporated

IT IS SO ORDERED:

By:  8/12/03
JUDGE, UNITED STATES
DISTRICT COURT